In the

Supreme Court of the United States

OCTOBER TERM, 1946

No. 658

PACKARD MOTOR CAR COMPANY,
a Michigan corporation,
Petitioner,
vs.
NATIONAL LABOR RELATIONS BOARD,
Respondent

On Writ of Certiorari to the United States Circuit Court of Appeals for the Sixth Circuit

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BRIEF FOR FOREMAN'S ASSOCIATION OF AMERICA, CHAPTER No. 5, APPELLEE

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I. OPINIONS BELOW

In the matter of Packard Motor Car Company (Representation Case) 61 N. L. R. B. 4, and In the matter of Packard Motor Car Company (Unfair Labor Practice) 64 N. L. R. B. 1212 (R. I 32, III, 1791) *National Labor Re-*

lations Board, Petitioner, Foreman's Association of America, Chapter No. 5, Intervenor, v. Packard Motor Car Company, Respondent, (6th C. C. A.) 157 F. (2d) 81-86 (R. III, 2096-2108). Petition for Rehearing denied 157 F. (2d) 87 (R. III, 21, 27).

II. STATUTES INVOLVED

N. L. R. A. 49 Stat. 409, 29 U. S. C., Sec. 151.

III. SUMMARY OF ARGUMENT

On the question as to whether foremen are Employees within the meaning of the National Labor Relations Act, a fair reading of the Act in the light of the history and present status of the Employer-Employee relationship is the most reliable basis for correct decision.

Introducing a new type of law by providing democratic procedure for determining and certifying collective bargaining agents of Employees leaves previous decisions and rules very little weight as against the plain words and purpose of the Act.

IV. ARGUMENT

1. Scope of Brief

The briefs filed by counsel for the Employer-Appellant and for the National Labor Relations Board as Appellee discuss a number of questions and cite authorities thought to be applicable thereto which will not be re-cited or discussed in this Brief.

The National Labor Relations Act brings something new into our law with the consequence that the claims of previous decisions, rules of construction and interpretation, principles analogous, and like contentions are so frail as to give little assistance. This is reflected in the relative brevity of the prevailing and dissenting Opinions of the 6th Circuit Court of Appeals.

Not even general knowledge of Labor Law is required to an understanding of this Act or for correct decision of the issue made by the petition of Foreman's Association of America for certification, the Answer of the Employer, and the proofs. What is needed is (1) a factory knowledge of the American Employment Relationship for the past fifty years and (2) a mental willingness to fairly read the Act.

2. Levels in Employer-Employee Relationship

A huge and expensive volume of assertion, special pleading and mere speculation has been indulged in the past five years by Employer interests who thereby betray nothing more than their complete lack of reconciliation to the idea of Employee organization in their own interest, to say nothing of orderly governmental procedure therefor. The mere volume of these assertions contrary to

ascertainable facts makes it necessary to consider briefly the interest, structure and functions of the principal parties in the American Employment Relationship.

Until the Petition for a Writ of Certiorari was filed in this case no serious effort had been made to escape the general alignment of the main levels of the Employer-Employee relationship in American mass-power production and distribution as:

A. Heretofore Accepted.

1. Ownership
2. Management
3. Supervision
4. Maintenance and Production

By early and frequent use of the phrase "foreman level of management" (Appellant's Brief p. 3, 5, 18) appellant's counsel seeks to telescope or merge the third subdivision into the second subdivision simply by the use of words. No enlargement of authority, additional function or increase of compensation prompts or supports this merger. It is done solely by easy phraseology, and the Employer-Employee relationship becomes:

B. As Claimed by Appellant.

1. Ownership
2. Management—Supervision
3. Maintenance and Production

This phrase, "foreman level of management" is noteworthy original composition as it is not at any place cited or quoted and it does not appear to have been used in any place cited or quoted and it does not appear to have been used in any Congressional Debate, Statute, Board or Court

decision or literature on the subject. It goes further than the *dicta* in the majority opinion of the 6th Circuit Court of Appeals in this case using equally easy phraseology, the "front line of management" (R. III, 2097).

Both phrases concede what the record overwhelmingly shows, namely, that Management and Supervision *are not* one and the same thing, that they are different and that there are generally in the American Employment Relationship three levels of "Employees" instead of two levels.

Without here going into the severe reductions in the authority and functions of Supervision in the last third of a century (R. III, 2098) by reason of ever more minute subdivision of labor, mechanization, multiplication of management departments, and organization of supervised labor, the record here supports a classification:

C. As to Function and Compensation.

1. Ownership—Investor-Speculator—
   Profits
   No Plant Knowledge or Skills
2. Managament—Sometimes a Stockholder—
   Bonus-Salary
   Little Plant Knowledge or Skill
3. Supervision—Salary or Hourly Rate
   Much Plant Knowledge, Skill and
   Experience
4. Maintenance & Production—Hourly Rate
   Plant Knowledge and Skills Without
   Management or Supervisory Experience

The melange of motion motivated by the purpose of Ownership, the methods of Management, the acts of hourly rated supervised persons in handling materials and machines are "traffic copped" by Supervision along the aisles

of production and service, but the performance of this function by Supervision on a "next to the janitor" basis maintains an ever widening gulf between Supervision and Management.

Common knowledge, the National Labor-Relations Act and the record show these levels of the Employer-Employee Relationship:

D. As to Fact and Form of Organization.

1. Ownership
2. Management

} Organized in Local, State and National Associations, Chambers, Councils and Clubs.

3. Supervision Generally Unorganized—A Small Percent in Organizations Mixed with, Dominated by or Affiliated with Unions of Supervised Workers or in Company Sponsored Associations.

4. Maintenance and Production } Organized in Trade or Industrial Unions.

In fact and as envisaged by the National Labor Relations Act on the two sides of the table, bargaining as to wages, hours and working conditions, we find levels in American Employment Relationship:

E. As to Self-Interest.

1. Ownership

vs.

2. Management
3. Supervision
4. Maintenance and Production

That the rate and manner of compensation of Management as compared to Supervision and to Maintenance and

Production leaves Management muddle-minded as to where its ultimate economic interest is, does not alter the fundamental relationship. Ownership is the "hirer" and Management, Supervision, Maintenance and Production are its "hired men"—one Employer and three general classes of Employees.

By the fanciful phrase "foreman level of management" counsel for appellant seeks to raise Supervision, if possible, above the level of persons employed, regardless of the fact of employment. But acceptance of the phrase "foreman level of management" obviously would not actually lift Supervision into the realm of Ownership, into the realm of dividends, bonuses and precentages, or out of the realm of monthly, weekly and hourly rates of pay, nor out of that canyon-like "middle" between organized Ownership on the one hand and organized Labor on the other hand.

Chemists, Engineers and technicians of that kind are not here discussed because the record does not include this type of "plant know-how" which, as everybody knows is also "hired."

3. Sub-sections (2) and (3) in Section 2 Read in Pari Materia.

Common knowledge and Section 1 of the National Labor Relations Act establish as an important purpose of Ownership the prevention, corruption or defeat of organization by its Employees in their own interest.

Only a single *aspect* of Ownership is treated in the Act and that is its employment of "hired" men to carry out its purposes.

Those who become the "hired" men of Ownership are treated by the Act in three clearly defined aspects:

F. As to *Aspect* or Function.

1. Hired in Production or Service
2. Hired to Handle Relations with other Employees
3. Persons Bargaining at Arms Length with Ownership as to Their Own Wages, Hours and Working Conditions

The "persons" affected by the Act are first defined, Section 2 (1), so that the Act may next define the *aspects* of their relationship as Employer and Employees that are the subject-matter of the legislation.

The persons to whom Sub-sections (2) and (3) apply are stated in the broadest possible terms by the use of the words "*any* person" in Sub-section (2), and "*any* employee" in Sub-section (3). Thereby Congress showed its intention to disregard the person as the basis of classification and to legislate concerning defined *aspects* of their relationship in employment.

Sub-section (2) applies to the *aspect* or area in which any "hired" person acts in the interest of an Employer. It does not exclude, nor is it inconsistent with, a contemporaneous employment by the same Owner for the performance of other tasks, or in a different *aspect*.

Sub-section (2) relates to that *aspect* of the hired person's employment wherein he contacts other hired persons as to their rights as afterwards defined in the Act. It relates to an *aspect* of the hiring.

Sub-section (2) relates to the Acts of any and all "hired" persons whose work for the hirer brings them into contact with the rights of other persons hired that are defined and secured in the subsequent sections of the Act. It may apply and does apply to "any" and every

employed person from the gatekeeper, the doorkeeper, the janitor, through the maintenance and production workers, Supervision, and Management, and to all but Ownership itself.

Sub-section (3) deals with a different *aspect* of employment. It deals with the Employees of Ownership with respect to their rights as secured by the later sections of the Act and in relationship to their organization to secure for themselves wages, hours and working conditions. This *aspect* of employment is the principle subject of the Act and no doubt it was placed immediately in Section 2 next to Sub-section (2) so that the *aspects* of employment respectively covering and applying to it would not become disjointed or confused.

Sub-sections (2) and (3) apply to different *aspects* of a hiring, or employment, and they may and probably do apply to the *same persons*.

When anybody but the Owner is acting in the interest of Ownership affecting the rights of other "hired" persons as thereinafter is set forth, the Act constitutes that person, in that *aspect*, the agent of Ownership.

When one or more persons approach Ownership or its agents, as defined in Sub-section (2), with respect to *their own* wages, hours and working conditions, or the rights thereinafter secured them by the Act, they are clearly defined as Employees.

It is possible, by reading Sub-sections (2) and (3) *in pari materia*, that within the same hour, or even at the same time, the same person may be an agent of the Employer under Sub-section (2) and an Employee under Sub-section (3) as it is not a matter of time or person, but a matter of the particular *aspect* of hiring that determines whether a "hired" person is an Employer or an Employee.

The agency may be single or double; (1) production or service, and/or (2) dealing with other "hired" persons with respect to their rights or aims as employees, but as to the third *aspect* there is no agency. Here the relationship becomes adversary, Ownership and Supervision being face to face and at arms length.

The Act furnishes no authority for trying to change a "hired" person into an owner or agent of Ownership for any purpose or in any capacity other than the special agency for Ownership so plainly set forth in the Act.

The Owner is treated throughout as a single and uniform economic entity.

The term "Employee" as defined in Section 2 (3) is couched in language as broad as could possibly be used.

It is in the third *aspect* of being "hired" by an Owner that the term "Employee" is used in Section 2 (3). This Section is obviously broad enough in the definition of the word "Employee" to include all of the help or persons "hired" by Ownership or an Employer in any or all three *aspects* in which the Act considers a "hired" person. The rights secured by the Act may be availed of by any person "hired" by Ownership for any purpose whatsoever with respect to organization to secure the wages, hours and working conditions of the persons "hired."

The Employer's claim that Section 2 (2) should be read *in pari materia* with Section 2 (3) is an attempt to give Section 2 (2) such an unreal and exaggerated meaning as to limit or wipe out the plainly intended meaning and operation of Section 2 (3). The construction contended for by Appellant is not an attempt to give the two clauses equal proper effect, but to destroy the one (Section 2 (3)) by an unreal and obviously not intended construction of the other (Section 2 (2)).

A fair reading of the National Labor Relations Act shows that the parties subject to its provisions are classified:

G. According to *aspects* of Employer-Employee Relationship.

1. Employer—Owner or "hired" persons when acting for Ownership as affecting the right of any other Employee to organize
   (a) Management
   (b) Supervision
   (c) Maintenance and Production
2. Employees—"Hired" persons when acting in their own several and collective interests as to *their own* wages, hours and working conditions
   (a) Management
   (b) Supervision
   (c) Maintenance and Production

It is this plain and inevitable sense, meaning and purpose of this Act that has driven the Employers to the filmy vagaries and fantastic propaganda that has characterized their efforts to evade the consequences of a fair reading of the National Labor Relations Act.

V. REASONING OF APPELLANT

That the granting of the rights plainly secured to all employees by the National Labor Relations Act may "materially affect the mass production industry" does not entitle the opponents of Employee-organization to cripple or thwart administration of the Act. The Act was plainly intended by Congress to materially or even drastically change the American Employment Relationship from the paralysis and bloody chaos of unrestrained exploitation and conflict to orderly procedures under governmental supervision. Such change as may thereby be made were specifically declared by Congress to be in the public interest.

That a law involves personnel and the rights of a large group (perhaps 3,500,000) of supervisory Employees is not a reason for reversal in view of the plain intent and purpose of the National Labor Relations Act. If Appellant's counsel means that a minority of Supervisors, for various reasons, are opposed to organization, the right of the majority to collective bargaining through organizations of their own choosing, so clearly granted by this Act, should not be further delayed.

That the Board, partly through changes in its membership, and partly through a change of opinion brought about by a more accurate knowledge of the facts as to Supervision, has first extended the benefits of the Act to foremen, then denied those benefits, and then again granted them, and that it has overlooked the limitations upon its powers in Sec. 9 (b), and when pointed out by foreman's counsel has again regarded those limitations, does not support a demand for reversal here.

On the question whether foremen were entitled to the benefits of the Act and whether the Board could refuse to approve a unit appropriate for the purposes of collective bargaining the Board has been subjected to an avalanche of anti-union propaganda and unrestrained pressure, but it has finally come to the correct conclusions on both issues.

The argument of Appellant's counsel (Br. p. 26) that it is "absurd and unreasonable" for employees highly placed and paid, such as Managers and Superintendents to organize in their own interest, ignores immemorial practice and the fact that the more a man has the more imperative and reasonable it is for him to organize with persons having a community of interests in their common protection, as for instance, Owners, Ministers, Lawyers, Doctors, Engineers, Chemists, Architects, Railway Managers and the like. The more learning and skill a person possesses, the more he has for another to exploit.

The argument that an agent may not be placed in a position of temptation to serve his own interest at the expense of his principal applies, of course, only in business relations. It cannot and does not apply where, as here, the parties are dealing with respect to the services to be rendered by the agent and the extent of his compensation or pay. In the negotiations between the Owner and the Supervisor as to the duties and compensation of the latter, the parties stand and act at arms length and as adversaries.

When it comes to the fidelity of the Supervisor in such contacts as he has with supervised persons he is not dealing with his own association or union. It is as plain as a pikestaff that a Supervisor who is backed by a union of his fellow Supervisors is much more likely to stand up for his Employer's legitimate interests than an unorganized Supervisor standing alone with the certain knowledge that his

Employer will yield more to the shop steward of the supervised workers' union than he will to the indiyidual representation of an unorganized Supervisor. From this viewpoint the organization of Supervisors is distinctly in the interest of the Employer.

From the discussion of the intent of Congress as disclosed by the debates there, including the Case Bill (Br. pp. 30, 31, 32, 34) Appellant's counsel omitted the definitive statement of the venerable Senator Wagner on the Case Bill debate as to what Congress intended when the National Labor Relations Act was enacted, as follows:

> Senator Wagner:
>
> "Mr. President I understand that the question with which we are dealing is now pending in Court. I believe that the subject about which we are asked to legislate is the very subject over which we fought several years ago. The issue then was, shall the workers have the right to organize and bargain collectively? *Foremen are also workers.* What we are now being asked to say to the foremen is, 'No; you may not organize. If your employer does not want you to have a union, you may not organize.' As I have said, we fought over that issue some years ago when the so called Wagner Act was first before the Congress. *Supervisors are not a part of management;* but it is now proposed to say to them, 'You may not be protected under the so called Wagner Act because you are foremen. You are not ordinary workers. You may not have anything to say about your wages. You have no right to bargain collectively.' We fought out that very issue back in 1933, and we thought it was settled. The employer said to the employee, 'No; you may not belong to a union.' We were compelled to enact legislation so as to permit the workers to organize."

Continuing Senator Wagner said:

> "Senators may do as they please, but if they vote for the amendment they will say to many foremen and supervisors, 'No; you have no legal protection. You have no right to bargain collectively. You have no right to carry on collective bargaining with your employer with reference to what your wages, hours or anything else shall be.' Senators, if we do that I say that we are returning to the old days." (Italics ours.)

(Cong. Rec. May 25th, 1946, Vol. 92, p. 5811.)

The foregoing statement of the author of this Act would seem to be as much a part of its legislative history as the quotations of Senator Ellender set forth on pages 31 and 32 in Appellant's Brief, both being argument on an attempt to amend it to expressly forbid certification of foremen's unions.

VI. CONCLUSION

The holding that foremen are "Employees" within the meaning of the National Labor Relations Act, that petitioners are an appropriate unit, and the Order of the 6th Circuit Court of Appeals enforcing the Order of the National Labor Relations Board should be affirmed.

Respectfully submitted,

WALTER M. NELSON,
Attorney for Appellee Association.

Dated: January 7th, 1947.

APPENDIX

NATIONAL LABOR RELATIONS ACT

(49 Stat. 449)

AN ACT

To diminish the causes of labor disputes burdening or obstructing interstate and foreign commerce, to create a National Labor Relations Board, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

FINDINGS AND POLICY

Section 1. The denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce by (a) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.

The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in

the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising our of differences as to wages, hours, or other working conditions, by restoring equality of bargaining power between employers and employees.

It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

DEFINITIONS

SEC. 2. When used in this Act—

(1) The term "person" includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

(2) The term "employer" includes any person acting in the interest of an employer, directly or indirectly, but shall not include the United States, or any State or political subdivision thereof, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

(3) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse.

(4) The term "representatives" includes any individual or labor organization.

(5) The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(6) The term "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State,

Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

(7) The term "affecting commerce" means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.

(8) The term "unfair labor practice" means any unfair labor practice listed in section 8.

(9) The term "labor dispute" includes any controversy concerning terms, tenure, or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

(10) The term "National Labor Relations Board" means the National Labor Relations Board created by section 3 of this Act.

(11) The term "old Board" means the National Labor Relations Board established by Executive Order Numbered 6763 of the President on June 29, 1934, pursuant to Public Resolution Numbered 44, approved June 19, 1934 (48 Stat. 1183), and reestablished and continued by Executive Order Numbered 7074 of the President of June 15, 1935, pursuant to Title I of the National Industrial Recovery Act (48 Stat. 195) as amended and continued by Senate Joint Resolution 133[1] approved June 14, 1935.

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[1] So in original.

NATIONAL LABOR RELATIONS BOARD

Sec. 3. (a) There is hereby created a board, to be known as the "National Labor Relations Board" (hereinafter referred to as the "Board"), which shall be composed of three members, who shall be appointed by the President, by and with the advice and consent of the Senate. One of the original members shall be appointed for a term of one year, one for a term of three years, and one for a term of five years, but their successors shall be appointed for terms of five years each, except that any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. The President shall designate one member to serve as the chairman of the Board. Any member of the Board may be removed by the President, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause.

(b) A vacancy in the Board shall not impair the right of the remaining members to exercise all powers of the Board, and two members of the Board shall, at at all times, constitute a quorum. The Board shall have an official seal which shall be judicially noticed.

(c) The Board shall at the close of each fiscal year make a report in writing to Congress and to the President stating in detail the cases it has heard, the decisions it has rendered, the names, salaries, and duties of all employees and officers in the employ or under the supervision of the Board, and an account of all moneys it has disbursed.

Sec. 4. (a) Each member of the Board shall receive a salary of $10,000 a year, shall be eligible for reappointment, and shall not engage in any other business, vocation, or employment. The Board shall appoint, without regard

for the provisions of the civil-service laws but subject to the Classification Act of 1923, as amended, an executive secretary, and such attorneys, examiners, and regional directors, and shall appoint such other employees with regard to existing laws applicable to the employment and compensation of officers and employees of the United States, as it may from time to time find necessary for the proper performance of its duties and as may be from time to time appropriated for by Congress. The Board may establish or utilize such regional, local, or other agencies, and utilize such voluntary and uncompensated services, as may from time to time be needed. Attorneys appointed under this section may, at the direction of the Board appear for and represent the Board in any case in court. Nothing in this Act shall be construed to authorize the Board to appoint individuals for the purpose of conciliation of mediation (or for statistical work), where such service may be obtained from the Department of Labor.

(b) Upon the appointment of the three original members of the Board and the designation of its chairman, the old Board shall cease to exist. All employees of the old Board shall be transferred to and become employees of the Board with salaries under the Classification Act of 1923, as amended, without acquiring by such transfer a permanent or civilservice status. All records, papers, and property of the old Board shall become records, papers and property of the Board, and all unexpended funds and appropriations for the use and maintenance of the old Board shall become funds and appropriations available to be expended by the Board in the exercise of the powers, authority, and duties conferred on it by this Act.

(c) All of the expenses of the Board, including all necessary traveling and subsistence expenses outside the District of Columbia incurred by the members or em-

ployees of the Board under its orders, shall be allowed and paid on the presentation of itemized vouchers therefore approved by the Board or by any individual it designates for that purpose.

Sec. 5. The principal office of the Board shall be in the District of Columbia, but it may meet and exercise any or all of its powers at any other place. The Board may, by one or more of its members or by such agents or agencies as it may designate, prosecute any inquiry necessary to its functions in any part of the United States. A member who participates in such an inquiry shall not be disqualified from subseqeuntly participating in a decision of the Board in the same case.

Sec. 6.(a) The Board shall have authority from time to time to make, amend, and rescind such rules and regulations as may be necessary to carry out the provisions of this Act. Such rules and regulations shall be effective upon publication in the manner which the Board shall prescribe.

RIGHTS OF EMPLOYEES

Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

Sec. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

(2) To dominate or interfere with the formation or administration of any labor organization or contribute finan-

cial or other support to it: *Provided,* That subject to rules and regulations made and published by the Board pursuant to section 6 (a), an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay.

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided,* That nothing in this Act, or in the National Industrial Recovery Act (U. S. C., Supp. VII, title 15, secs. 701-712), as amended from time to time or in any code or agreement approved or prescribed thereunder, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice) to require, as a condition of employment, membership therein, if such labor organization is the representative of the employees as provided in section 9 (a), in the appropriate collective bargaining unit covered by such agreement when made.

(4) To discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act.

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9 (a).

REPRESENTATIVES AND ELECTIONS

Sec. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided,* That any individual employee or a group of employees shall have the right at any time to present grievances to their employer.

(b) The Board shall decide in each case whether, in order to insure to employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof.

(c) Whenever a question affecting commerce arises concerning the representation of employees, the Board may investigate such controversy and certify to the parties, in writing, the name or names of the representatives that have been designated or selected. In any such investigation, the Board shall provide for an appropriate hearing upon due notice, either in conjunction with a proceeding under section 10 or otherwise, and may take a secret ballot of employees, or utilize any other suitable method to ascertain such representatives.

(d) Whenever an order of the Board made pursuant to section 10 (c) is based in whole or in part upon facts certified following an investigation pursuant to subsection (c) of this section, and there is a petition for the enforcement or review of such order, such certification and the record of such investigation shall be included in the tran-

script of the entire record required to be filed under subsections 10 (e) or 10 (f), and thereupon the decree of the court enforcing, modifying, or setting aside in whole or in part the order of the Board shall be made and entered upon the pleadings, testimony, and proceedings set forth in such transcript.

PREVENTION OF UNFAIR LABOR PRACTICES

Sec. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise.

(b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint. Any such complaint may be amended by the member, agent, or agency conducting the hearing or the Board in its discretion at any time prior to the issuance of an order based thereon. The person so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint. In the discretion of the member, agent, or agency conducting the hearing or the Board, any other person may be allowed to intervene in said proceeding and to present testimony. In any

such proceedings the rules of evidence prevailing in courts of law or equity shall not be controlling.

(c) The testimony taken by such member, agent, or agency or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. Such order may further require such person to make reports from time to time showing the extent to which it has complied with the order. If upon all the testimony taken the Board shall be of the opinion that no person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue an order dismissing the said complaint.

(d) Until a transcript of the record in a case shall have been filed in a court, as hereinafter provided, the Board may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it.

(e) The Board shall have power to petition any circuit court of appeals of the United States (including the Court of Appeals of the District of Columbia), or if all the circuit courts of appeals to which application may be made are in vacation, any district court of the United States (including the Supreme Court of the District of Columbia), within any circuit or district, respectively, wherein the un-

fair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining oder, and shall cetify and file in the court a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent of agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board as to the facts, if supported by evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the transcript. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which, if supported by evidence shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. The

jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate circuit court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States and upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347).

(f) Any peron aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the Court of Appeals of the District of Columbia, by filing in such a court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith served upon the Board, and thereupon the aggrieved party shall file in the court a transcript of the entire record in the proceeding, certified by the Board, including the pleading and testimony upon which the order complained of was entered and the findings and order of the Board. Upon such filing, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e), and shall have the same exclusive jurisdiction to grant the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; and the findings of the Board as to the facts, if supported by evidence, shall in like manner be conclusive.

(g) The commencement of proceedings under subsection (e) or (f) of this section shall not, unless specifically

ordered by the court, operate as a stay of the Board's order.

(h) When granting appropriate temporary relief or a restraining order, or making and entering a decree enforcing, modifying, and enforcing as so modified or setting aside in whole or in part an order of the Board, as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes," approved March 23, 1932 (U. S. C., Supp. VII, title 29, secs. 101-115).

(i) Petitions filed under this Act shall be heard expeditiously, and if possible within ten days after they have been docketed.

INVESTIGATORY POWERS

SEC. 11. For the purpose of all hearings and investigations, which, in the opinion of the Board, are necessary and proper for the exercise of the powers vested in it by section 9 and section 10—

(1) The Board, or its duly authorized agents or agencies shall at all reasonable times have access to, for the purpose of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to any matter under investigation or in question. Any member of the Board shall have power to issue subpenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation or in question, before the Board, its member, agent, or agency conducting the hearing or investigation. Any member of the Board, or any agent or agency designated by the Board for such purposes, may administer oaths and affirmations, examine

witnesses, and receive evidence. Such attendance of witnesses and the production of such evidence may be required from any place in the United States or any Territory or possession thereof, at any designated place of hearing.

(2) In case of contumacy or refusal to obey a subpena issued to any person, any District Court of the United States or the United States courts of any Territory or possession, or the Supreme Court of the District of Columbia, within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the Board shall have jurisdiction to issue to such person an order requiring such person to appear before the Board, its member, agent, or agency, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

(3) No person shall be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence in obedience to the subpena of the Board, on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(4) Complaints, orders, and other process and papers of the Board, its member, agent, or agency, may be served either personally or by registered mail or by telegraph or by leaving a copy thereof at the principal office or place of business of the person required to be served. The verified return by the individual so serving the same setting forth the manner of such service shall be proof of the same, and the return post office receipt or telegraph receipt therefor when registered and mailed or telegraphed as aforesaid shall be proof of service of the same. Witnesses summoned before the Board, its member, agent, or agency, shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

(5) All process of any court to which application may be made under this Act may be served in the judicial district wherein the defendant or other person required to be served resides or may be found.

(6) The several departments and agencies of the Government, when directed by the President, shall furnish the Board, upon its request, all records, papers, and information in their possession relating to any matter before the Board.

Sec. 12. Any person who shall willfully resist, prevent, impede, or interfere with any member of the Board or any of its agents or agencies in the performance of duties pursuant to this Act shall be punished by a fine of not more than $5,000 or by imprisonment for not more than one year, or both.

LIMITATIONS

Sec. 13. Nothing in this Act shall be construed so as to interfere with or impede or diminish in any way the right to strike.

Sec. 14. Whenever the application of the provisions of section 7 (a) of the National Industrial Recovery Act (U. S. C., Supp. VII, title 15, sec 707 (a), as amended from time to time, or of section 77 B, paragraphs (l) and (m) of the Act approved June 7, 1934, entitled "An Act to amend an Act entitled 'An Act to establish a uniform system of bankruptcy throughout the United States' approved July 1, 1898, and Acts amendatory thereof and supplementary thereto" (48 Stat. 922, pars. (l) and (m)), as amended from time to time, or of Public Resolution Numbered 44, approved June 19, 1934 (48 Stat. 1183), conflicts with the application of the provisions of this Act, this Act shall prevail: *Provided*, That in any situation where the provisions of this Act cannot be validly enforced, the provisions of such other Acts shall remain in full force and effect.

Sec. 15. If any provision of this Act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

Sec. 16. This Act may be cited as the "National Labor Relations Act."

Approved, July 5, 1935.